

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

MYRNA I. JOHNSON, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 FRED MEYER STORES, INC., )  
 a Delaware corporation; )  
 and JAIME SAN MIGUEL, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Case No. J04-008 CV

DEPOSITION OF MYRNA JOHNSON  
Pages 1 through 264, Inclusive  
Taken: Monday, January 23, 2006  
Place: Juneau, Alaska

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1 A. Yes. We were standing in there, and he  
2 said, "Come on in here."  
3 Q. All right. So you went into Fred  
4 Sayre's office, and he's got a separate office as  
5 the store director?  
6 A. Yes, sir.  
7 Q. Did you sit down?  
8 A. He make a gesture for me to sit down.  
9 I sit down.  
10 Q. And was Mr. San Miguel standing or  
11 sitting?  
12 A. Standing.  
13 Q. And where was Mr. Sayre?  
14 A. Sitting at his desk.  
15 Q. All right. What happened at that  
16 point?  
17 A. He put out a written warning notice and  
18 start to read it to me.  
19 Q. Well, which "he"?  
20 A. Mr. San Miguel.  
21 Q. All right. Are you saying he stood  
22 there, or he sat down and read it to you?  
23 A. He stood blocking the door.  
24 Q. Well, the door was closed, wasn't it?  
25 A. Yes, he close it. So I was sitting,

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1 and then he stood right close to me with his back  
2 behind the door.  
3 Q. All right. So you came in the room.  
4 There is a doorway. There is Mr. Sayre's desk.  
5 You sit down at the chair in front of the desk, and  
6 there is no -- actually, there was not a second  
7 chair there, either, was there?  
8 A. There was a second chair.  
9 Q. All right. Besides the one Mr. Sayre  
10 was in?  
11 A. No, in front of Mr. Sayre.  
12 Q. Oh, all right. So Mr. San Miguel stood  
13 up there, and you said that he read something to  
14 you?  
15 A. Yes. He read the warning notice.  
16 Q. Okay. Without having it in front of  
17 you -- and we'll look at it a little bit later --  
18 but what do you recall it said, in effect?  
19 A. He said that my job performance -- he  
20 talk about my recovery, and he said that if my job  
21 performance will not improve, I am -- I have to --  
22 I will lose, basically, my job as assistant  
23 manager.  
24 Q. Was there a time frame mentioned in the  
25 warning?

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1 A. In 30 days.  
2 Q. All right. But you weren't being  
3 suspended, were you?  
4 A. No.  
5 Q. You weren't being fired?  
6 A. No.  
7 Q. All right. And that's consistent with  
8 the normal procedure to give, first of all, a  
9 verbal warning with a written documentation, if you  
10 want an employee to improve, was it not?  
11 A. He didn't give me a verbal warning.  
12 Q. Well, he read you -- that's a verbal  
13 warning, because he didn't ask you to sign it, did  
14 he?  
15 A. He wants me to sign it.  
16 Q. Now, wait a minute. At the time he  
17 first read it to you, isn't it true he never asked  
18 you to sign it?  
19 A. No, sir. He asked me to sign it.  
20 Q. At the beginning?  
21 A. He have a pen, and he was reading it,  
22 and he was telling me to sign it. He have a pen in  
23 his hand.  
24 Q. Well, having a pen in his hand -- are  
25 you testifying that it is your recollection

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1 Mr. San Miguel asked you to sign that at the time?  
2 A. Yes, sir.  
3 Q. And what did you say?  
4 A. I said, "I cannot sign this. This is  
5 not true."  
6 Q. Why is it not true?  
7 A. Because I know I did a good recovery.  
8 I know that my job performance is still the same  
9 thing from the first day that I took that job.  
10 Q. Have you had employees ever disagree  
11 with your evaluation of their job performance and  
12 walk off the job?  
13 A. No, sir.  
14 Q. So all the time you worked at Fred  
15 Meyer, no one who worked when you were supervising  
16 them at the time ever disagreed with your  
17 evaluation of their performance?  
18 A. They walk out of the job, but not with  
19 job performance, with evaluation. I do not do the  
20 evaluation, sir.  
21 Q. All right. Let's go back. So your  
22 testimony is that Mr. San Miguel reads you this  
23 warning and then asks you to sign it, and you say  
24 you won't sign it.  
25 A. Yes, sir. I start to -- I was crying

Exhibit 33

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1 already by the time he finish reading it. I was  
 2 already crying.  
 3 Q. Did you expect this?  
 4 A. No.  
 5 Q. You just told me earlier that you had  
 6 received several OV's that week from Mr. San Miguel  
 7 which were critical of your job performance, had  
 8 you not?  
 9 A. In the course of the job, sir, we  
 10 always receive OV's a lot of time, and also because  
 11 I know that I am doing a good job.  
 12 Q. Well, you just told me a few minutes  
 13 ago that Mr. San Miguel told you the very first  
 14 thing that standards are going to be higher when  
 15 you returned. Didn't he tell you that?  
 16 A. He tell that to me because he was  
 17 showing me all those that has not been done.  
 18 Q. All right. Let's go back to the  
 19 meeting on March the 18th, 2002. You start to cry.  
 20 Do you say anything else to Mr. Sayre or  
 21 Mr. San Miguel at that time?  
 22 A. I was crying so hard, sir, and I said,  
 23 "I need to go. I need to go."  
 24 Q. Go where?  
 25 A. Downstairs, where I have more space and

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1 where I can get something -- a glass of water or  
 2 something.  
 3 Q. Did Mr. Sayre say anything?  
 4 A. He said that "We know that your job  
 5 performance is affected by what happened to your  
 6 daughter."  
 7 Q. And did you respond to that?  
 8 A. Yes. I cry more.  
 9 Q. Did you respond to --  
 10 A. I said, "Please don't say that." I  
 11 said, "I have never left this store from the day I  
 12 come in here -- from the moment I come in here  
 13 until the moment that we close the store. I do not  
 14 leave this store. Please, do not say that, because  
 15 I am working harder when I was -- before what  
 16 happened to my daughter."  
 17 Q. All right. You come back from having  
 18 taking your daughter in a difficult family  
 19 situation, and upon your return, for several days  
 20 the department manager concludes that you are not  
 21 performing as -- in a satisfactory manner. Do you  
 22 think it unusual that he and the store director  
 23 would attribute that to a family situation?  
 24 A. No --  
 25 Q. Well then --

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1 A. I don't understand the question, sir.  
 2 I get a little bit confused on that.  
 3 Q. Let me ask you this. What else did  
 4 Mr. Sayre say?  
 5 A. Nothing. He look at me there, while I  
 6 was crying, and I stood up.  
 7 Q. Did he say anything to you about,  
 8 "Don't leave. If you do, it will be considered a  
 9 quit"?  
 10 A. No, sir.  
 11 Q. Are you sure?  
 12 A. Yes.  
 13 Q. As a first assistant under Fred Meyer  
 14 policy in effect in March 2002, who at the store,  
 15 if anyone, had authority to terminate an employee  
 16 at your level?  
 17 A. Mr. San Miguel and Mr. Sayre.  
 18 Q. Do you know if Mr. San Miguel actually  
 19 had authority, or if it only could be Mr. Sayre?  
 20 A. Mr. San Miguel.  
 21 Q. And on what do you base that  
 22 conclusion?  
 23 A. Because he is our immediate boss.  
 24 Q. Have you ever known a situation where  
 25 the department manager had the authority to fire a

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1 first assistant without the actual approval and  
 2 firing done by the store director?  
 3 A. No, sir, I don't.  
 4 Q. Okay. Do you recall anything else that  
 5 was said by Mr. San Miguel or Mr. Sayre at that  
 6 point in time before you left the room?  
 7 A. No.  
 8 Q. Okay. You have no recollection of any  
 9 comments by Mr. Sayre as to what he would conclude  
 10 would be your situation if you got up and walked  
 11 out of the room before the discussion ended?  
 12 A. No, sir. I was crying very, very hard,  
 13 sir. I was saying something, and I don't even know  
 14 if they understand. I was saying, "I know you have  
 15 somebody in your mind" --  
 16 Q. Did you say that to them, or do you  
 17 know if they understood that?  
 18 A. I said, "You must have somebody in mind  
 19 to replace me."  
 20 Q. Now, why would you say that?  
 21 A. Because prior to that, I notice some  
 22 changes in the store -- in the department.  
 23 Q. What changes?  
 24 MJ Exhibit 33 Mr. San Miguel had put me on the  
 25 schedule that is supposed to be for the second

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1 2002?

2 A. I know he was working daytime, because

3 his schedule, sir, is different.

4 Q. What do you mean, it's different?

5 A. He could write himself there, the

6 schedule. For example, is 7:00 to 5:00 every day

7 in the schedule, but it does not necessarily mean

8 he was there.

9 Q. Okay. Do you know how many days the

10 week of March 10, 2002, he was on the schedule to

11 be working?

12 A. I saw him when I walk in there on --

13 when I work on Tuesday. On the 12th, the 13th -- I

14 saw him on those days.

15 Q. Well, actually, if you think back, did

16 you see the schedule for that week when you started

17 on March 12?

18 A. I don't remember, sir.

19 Q. All right. Okay. You say your

20 schedule changed. Well, as we have already talked,

21 when you came back, the schedule had already been

22 set for the week of March 10 before you even

23 arrived back in town. Correct?

24 A. Yes, sir.

25 Q. Okay. And are you telling me that in

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1 the nine years you had worked at Fred Meyer, no one

2 in the apparel department had ever been given a

3 verbal reprimand of any type?

4 A. There was a lot, sir, that was given a

5 verbal warning.

6 Q. So then giving you a verbal warning

7 wasn't really unusual, was it?

8 A. He was not giving me a verbal warning,

9 sir. It was a warning notice already.

10 Q. Again, I think there is a difference of

11 opinion on that, but I understand what you are

12 saying.

13 In the nine years that you worked

14 for Fred Meyer, are you telling me that no one in

15 the apparel department had been given a written

16 warning for poor performance?

17 A. There are some, sir.

18 Q. All right. So, again, that's not

19 unusual, either, was it?

20 A. It was unusual when you are giving a

21 warning in front of the director.

22 Q. But you are a first-level assistant,

23 right?

24 A. Yes, sir.

25 Q. Do you know of any employee that

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1 Mr. San Miguel saw socially outside of Fred Meyer

2 during 2000, 2001, 2002?

3 A. Yes, I know some.

4 Q. Who?

5 A. He was going out with Kaylonna Haase at

6 the time.

7 Q. Anyone else he dated that you know of?

8 A. He was -- I know he was going out with

9 Minerva. Not -- like as friends, with wives and

10 everything. You said socially, so --

11 Q. All right. Let me rephrase it then.

12 How about anyone Mr. San Miguel

13 dated who worked at Fred Meyer besides Kaylonna?

14 A. I don't know, sir.

15 MR. DICKENS: Let's mark this,

16 please.

17 (Exhibit 1 duly marked)

18 BY MR. DICKENS:

19 Q. Ms. Johnson, you have been handed what

20 has been marked as Exhibit 1 to your deposition.

21 For the record, would you please identify that?

22 A. Yes, sir.

23 Q. What is that?

24 A. This is the application.

25 Q. Is that in your handwriting, the space

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1 above "To be completed by manager"?

2 A. Yes, sir.

3 Q. And is the information on page 1 that

4 you filled in true and accurate?

5 A. Yes, sir.

6 Q. Would you turn to page 2, please?

7 There is education listed there. There are some

8 places filled in. There is some information -- was

9 it correct at the time?

10 A. Yes, sir.

11 Q. And under your prior employment,

12 starting with Famous Footwear in Charlotte, North

13 Carolina, was that information correct at the time?

14 A. Yes, sir.

15 Q. So did you move from Charlotte, North

16 Carolina, to Juneau?

17 A. Yes, sir.

18 MR. DICKENS: Mark that, please.

19 (Exhibit 2 duly marked)

20 BY MR. DICKENS:

21 Q. Ms. Johnson, you have been handed what

22 has been marked as Exhibit 2 to your deposition.

23 Would you take a minute, please, and look at that?

24 MJ Exhibit 33 Page 4 of 11

25 Q. Are you familiar with that document?

1 A. Yes. We were standing in there, and he  
2 said, "Come on in here."

3 Q. All right. So you went into Fred  
4 Sayre's office, and he's got a separate office as  
5 the store director?

6 A. Yes, sir.

7 Q. Did you sit down?

8 A. He make a gesture for me to sit down.  
9 I sit down.

10 Q. And was Mr. San Miguel standing or  
11 sitting?

12 A. Standing.

13 Q. And where was Mr. Sayre?

14 A. Sitting at his desk.

15 Q. All right. What happened at that  
16 point?

17 A. He put out a written warning notice and  
18 start to read it to me.

19 Q. Well, which "he"?

20 A. Mr. San Miguel.

21 Q. All right. Are you saying he stood  
22 there, or he sat down and read it to you?

23 A. He stood blocking the door.

24 Q. Well, the door was closed, wasn't it?

25 A. Yes, he close it. So I was sitting,



1 A. In 30 days.

2 Q. All right. But you weren't being  
3 suspended, were you?

4 A. No.

5 Q. You weren't being fired?

6 A. No.

7 Q. All right. And that's consistent with  
8 the normal procedure to give, first of all, a  
9 verbal warning with a written documentation, if you  
10 want an employee to improve, was it not?

11 A. He didn't give me a verbal warning.

12 Q. Well, he read you -- that's a verbal  
13 warning, because he didn't ask you to sign it, did  
14 he?

15 A. He wants me to sign it.

16 Q. Now, wait a minute. At the time he  
17 first read it to you, isn't it true he never asked  
18 you to sign it?

19 A. No, sir. He asked me to sign it.

20 Q. At the beginning?

21 A. He have a pen, and he was reading it,  
22 and he was telling me to sign it. He have a pen in  
23 his hand.

24 Q. Well, having a pen in his hand -- are  
25 you testifying that it is your recollection

1 Mr. San Miguel asked you to sign that at the time?

2 A. Yes, sir.

3 Q. And what did you say?

4 A. I said, "I cannot sign this. This is  
5 not true."

6 Q. Why is it not true?

7 A. Because I know I did a good recovery.  
8 I know that my job performance is still the same  
9 thing from the first day that I took that job.

10 Q. Have you had employees ever disagree  
11 with your evaluation of their job performance and  
12 walk off the job?

13 A. No, sir.

14 Q. So all the time you worked at Fred  
15 Meyer, no one who worked when you were supervising  
16 them at the time ever disagreed with your  
17 evaluation of their performance?

18 A. They walk out of the job, but not with  
19 job performance, with evaluation. I do not do the  
20 evaluation, sir.

21 Q. All right. Let's go back. So your  
22 testimony is that Mr. San Miguel reads you this  
23 warning and then asks you to sign it, and you say  
24 you won't sign it.

25 A. Yes, sir. I start to -- I was crying

1 already by the time he finish reading it. I was  
2 already crying.

3 Q. Did you expect this?

4 A. No.

5 Q. You just told me earlier that you had  
6 received several OV's that week from Mr. San Miguel  
7 which were critical of your job performance, had  
8 you not?

9 A. In the course of the job, sir, we  
10 always receive OV's a lot of time, and also because  
11 I know that I am doing a good job.

12 Q. Well, you just told me a few minutes  
13 ago that Mr. San Miguel told you the very first  
14 thing that standards are going to be higher when  
15 you returned. Didn't he tell you that?

16 A. He tell that to me because he was  
17 showing me all those that has not been done.

18 Q. All right. Let's go back to the  
19 meeting on March the 18th, 2002. You start to cry.  
20 Do you say anything else to Mr. Sayre or  
21 Mr. San Miguel at that time?

22 A. I was crying so hard, sir, and I said,  
23 "I need to go. I need to go."

24 Q. Go where?

25 A. Downstairs, where I have more space and



1 where I can get something -- a glass of water or  
2 something.

3 Q. Did Mr. Sayre say anything?

4 A. He said that "We know that your job  
5 performance is affected by what happened to your  
6 daughter."

7 Q. And did you respond to that?

8 A. Yes. I cry more.

9 Q. Did you respond to --

10 A. I said, "Please don't say that." I  
11 said, "I have never left this store from the day I  
12 come in here -- from the moment I come in here  
13 until the moment that we close the store. I do not  
14 leave this store. Please, do not say that, because  
15 I am working harder when I was -- before what  
16 happened to my daughter."

17 Q. All right. You come back from having  
18 taking your daughter in a difficult family  
19 situation, and upon your return, for several days  
20 the department manager concludes that you are not  
21 performing as -- in a satisfactory manner. Do you  
22 think it unusual that he and the store director  
23 would attribute that to a family situation?

24 A. No --

25 Q. Well then --

1 A. I don't understand the question, sir.  
2 I get a little bit confused on that.

3 Q. Let me ask you this. What else did  
4 Mr. Sayre say?

5 A. Nothing. He look at me there, while I  
6 was crying, and I stood up.

7 Q. Did he say anything to you about,  
8 "Don't leave. If you do, it will be considered a  
9 quit"?

10 A. No, sir.

11 Q. Are you sure?

12 A. Yes.

13 Q. As a first assistant under Fred Meyer  
14 policy in effect in March 2002, who at the store,  
15 if anyone, had authority to terminate an employee  
16 at your level?

17 A. Mr. San Miguel and Mr. Sayre.

18 Q. Do you know if Mr. San Miguel actually  
19 had authority, or if it only could be Mr. Sayre?

20 A. Mr. San Miguel.

21 Q. And on what do you base that  
22 conclusion?

23 A. Because he is our immediate boss.

24 Q. Have you ever known a situation where

25 the department manager had the authority to fire a

1 the nine years you had worked at Fred Meyer, no one  
2 in the apparel department had ever been given a  
3 verbal reprimand of any type?

4 A. There was a lot, sir, that was given a  
5 verbal warning.

6 Q. So then giving you a verbal warning  
7 wasn't really unusual, was it?

8 A. He was not giving me a verbal warning,  
9 sir. It was a warning notice already.

10 Q. Again, I think there is a difference of  
11 opinion on that, but I understand what you are  
12 saying.

13 In the nine years that you worked  
14 for Fred Meyer, are you telling me that no one in  
15 the apparel department had been given a written  
16 warning for poor performance?

17 A. There are some, sir.

18 Q. All right. So, again, that's not  
19 unusual, either, was it?

20 A. It was unusual when you are giving a  
21 warning in front of the director.

22 Q. But you are a first-level assistant,  
23 right?

24 A. Yes, sir.

25 Q. Do you know of any employee that